



Volume 12 Number 10

October 2005

State Tax Return

Ohio Department Of Taxation Issues Proposed Rule Regarding The Definition Of "Foreign Corporation" Under The New Commercial Activity Tax

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The Ohio Department of Taxation has issued an information release regarding the definition of "foreign corporation" for purposes of the commercial activity tax ("CAT"). This information release includes a draft proposed rule for the Ohio Administrative Code. *Information Release CAT 2005-01*.

Since the term "foreign corporation" is used in two different contexts in Chapter 5751, the Department proposes Draft Ohio Admin. Code 5703-29-01 to clarify the definition. For purposes of R.C. 5751.011 "foreign corporation" is as defined in 26 U.S.C. § 7701(a)(3) and (5) and 26 CFR 301.7701-2(b).

Pursuant to 26 U.S.C. 7701(a)(3), a "corporation" "includes associations, joint stock companies and insurance companies." Further, "'foreign' when applied to a corporation . . . means a corporation . . . which is not domestic." 26 U.S.C. § 7701(a)(5). "Domestic when applied to a corporation . . . means created or organized in the United States or of any State" 26 U.S.C. § 7701(4). Therefore, under this proposed rule, the option to exclude or include the gross receipts of a "foreign corporation" from a consolidated elected taxpayer group under R.C. 5751.011(A)(1) is available only if the gross receipts are from a corporation formed outside the United States.

"Foreign corporation" for purposes of R.C. 5751.04 includes:

1. A corporation as defined in R.C. 1703.01¹; or
2. A corporation incorporated under the laws of another state.

¹ R.C. 1703.01 defines "foreign corporation" as a corporation incorporated under the laws of another state or a bank, savings bank, or savings and loan association chartered under the laws of the United States, the main office of which is located in another state.

Draft Admin. Code 5703-29-01(B)(1) and (2). Thus, pursuant to this proposed rule, the requirement to register with the Tax Commissioner for CAT applies only to corporations incorporated in Ohio or in another state because banks and savings and loans are excluded from CAT under R.C. 5751.01(E).■



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